

AMENDMENT UNDER 37 C.F.R. § 1.111
USSN 09/582,292
Attorney Docket No. Q59354

REMARKS

Claims 1-7 are all the claims pending in the application.

To summarize, the Examiner rejects claims 1-3 and 5-7 under 35 U.S.C. § 112, second paragraph, as being indefinite. Additionally, the Examiner rejects claims 1-7 under 35 U.S.C. § 102(b) as being anticipated by *newly* cited Jakobsen (U.S. Patent No. 4,721,223). Further, the Examiner maintains the rejection of claims 1 and 5-7 under 35 U.S.C. § 102(b) as being anticipated by Motill (U.S. Patent No. 4,368,825). Moreover, the Examiner rejects claim 4 under 35 U.S.C. § 103(a) as being obvious over Jakobsen.

Applicant's comments on the individual rejections are as follows.

I. Illustrative, Non-Limiting Embodiment of Applicant's Invention

Applicant's invention relates to a container 1 with a substantially cylindrical wall 2 and a petaloid-shaped base 6, 7 which extends from the substantially cylindrical wall 2. The base comprises a wall shaped convexly towards the outside, where at least three members 6 originate which are formed by outgrowths regularly distributed and separated in pairs by a portion of the convex base wall 7. The base wall 7 is hemispherical, except for a peripheral marginal linking area 8 with the cylindrical wall. The aforesaid peripheral marginal linking area 8 has a curve R1, R2 with an inflection 9. In another illustrative, non-limiting embodiment, the curve radius R of the hemispherical wall 7 is between 80% and 120% of the radius of the cylindrical wall 2.

II. Indefiniteness Rejections

The Examiner rejects claims 1-3 and 5-7 under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant amends the claims to define more clearly the present invention and to correct minor informalities. These amendments are believed to overcome the present § 112 rejection. Therefore, Applicant requests the Examiner to withdraw this rejection.

III. Anticipation Rejections

A. Claims 1-7:

The Examiner rejects claims 1-7 under 35 U.S.C. § 102(b) as being anticipated by *newly* cited Jakobsen (U.S. Patent No. 4,721,223). For at least the following reasons, Applicant traverses this rejection.

The Examiner takes the position that Jakobsen discloses all of the features of the claimed invention. In particular, the Examiner alleges that Jakobsen discloses a container having a cylindrical wall 10 and a petaloid-shaped base, wherein the base comprises a convex wall and outgrowth members (i.e., foot supports). Applicant respectfully disagrees.

In the present Office Action, Applicant respectfully submits that the Examiner apparently is paraphrasing the language of claim 1 and does not appear to be considering all of the recitations of claim 1. However, it is settled law that, to anticipate a claim, a reference must disclose each element of the claim in as complete detail as recited in the claim. That is, the Examiner must give patentable weight to each limitation recited in the claims.

In the present application, claim 1 recites, *inter alia*,:

“a container (1) with a substantially cylindrical wall (2) and a *petaloid-shaped base (6, 7) which extends from the substantially cylindrical wall,*

said base comprising a wall that is shaped substantially convexly towards an outside of the container,

wherein at least three members (6) *originate from the substantially cylindrical wall and are formed by outgrowths that are regularly distributed and separated in pairs by a portion of the convex base wall (7)*” (emphasis added).

In other words, the petaloid-shaped base is formed at the end of the cylindrical wall and is not a separate element added to the end of a container.

In comparison, Jakobsen merely discloses a container having a bottom with a convex shape (see, e.g., Abstract of Jakobsen; see also Figs. 1-8 and 13). In Jakobsen, the container has a separate member fastened to the bottom of the container. In fact, Jakobsen clearly outlines three distinct types of containers: (1) a container wherein the spherical end surface has been fitted with bulges of various shapes so that the bulges form a kind of leg on the package, (2) a container wherein the surface of the bottom of the container is principally spherical, but has been dislocated inwards so that the package stands on the concave part between the spherical surface and the central inward part, and (3) a container fitted with an outside stabilizing device which has the shape of a foot, so that the material in the outside stabilizing device is separated from the material of the container (see col. 2, lines 31-43). Of these types of containers, Jakobsen clearly

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indicates that the disclosure of Jakobsen “contemplates a container having fastened thereto a separate member, which consists of a supporting arrangement, for example a foot on the container” (see col. 3, lines 32-35).

Thus, Jakobsen clearly does not disclose a petaloid-shaped base which extends from the substantially cylindrical wall, as recited in claim 1. Accordingly, Applicant submits that Jakobsen clearly does not disclose or suggest all of the recitations of claim 1. Additionally, Applicant submits that claims 2, 3, and 5-7 also are patentable at least by virtue of their dependency from claim 1. Furthermore, claim 4 is patentable for reasons that are analagous to claim 1. Therefore, Applicant requests the Examiner to withdraw the anticipation rejection of claims 1-7 based on Jakobsen.

B. Claims 1 and 5-7:

Additionally, the Examiner maintains the rejection of claims 1 and 5-7 under 35 U.S.C. § 102(b) as being anticipated by Motill (U.S. Patent No. 4,368,825). For at least the following reasons, Applicant traverses this rejection.

In the Examiner’s Response to Arguments (see Office action, page 5, numbered paragraph 8), the Examiner maintains the position that Motill discloses a base wall (C-C) that is hemispherical except for the peripheral marginal area (A-C). Applicant respectfully disagrees with the Examiner’s position.

Applicant respectfully submits that the Examiner is mischaracterizing the Motill reference. In particular, Applicant respectfully submits that the Examiner incorrectly is

redefining and renaming the elements of Motill, as well as their relationships to each other, in an attempt to read the language of claim 1 onto the Motill reference. Additionally, Applicant respectfully submits that the Examiner is paraphrasing the language of claim 1, and therefore, is not considering all of the recitations of claim 1.

For example, claim 1 recites, *inter alia*, that “the base wall (7) is hemispherical, *except for a peripheral marginal linking area (8) with the cylindrical wall*”. That is, the base wall includes the hemispherical portion and the peripheral marginal linking area. On the other hand, the peripheral marginal linking area is located at the position where the base wall meets the cylindrical wall.

However, in the present Office Action, the Examiner apparently takes the position that the *base wall* of Motill includes only the spherical portion (C-C), not the entire base wall (A-G), as shown in Figure 9 of Motill. As such, the Examiner alleges that the area (A-C) is positioned at the peripheral marginal area of the *base wall* (C-C), not at the peripheral marginal linking area of the base wall *with the cylindrical wall*, as recited in claim 1.

Contrary to the Examiner’s position, Applicant respectfully submits that Motill discloses a bottom end (i.e., a base wall) of the container that meets the sidewall of the container. Thus, the bottom end (A-G) of the Motill container appears to be comparable (at best) to the base wall of claim 1, not merely the spherical portion (C-C), as alleged by the Examiner. As such, the linking area forms substantially all of the bottom end, with the exception of the spherical portion (C-C), which is located at the center of the bottom of the container. Therefore, Motill clearly does not disclose or suggest that the linking area (A-C) is formed at the peripheral or marginal

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area of the bottom end of the container, as recited in claim 1. Accordingly, Applicant submits that Motill neither discloses nor suggests all of the elements of the claimed invention.

III. Obviousness Rejections

The Examiner also rejects claim 4 under 35 U.S.C. § 103(a) as being obvious from Jakobsen. For at least the following reasons, Applicant traverses this rejection.

As set forth above, Jakobsen clearly does not disclose or suggest a container of the type claimed by Applicant. For example, Jakobsen neither discloses nor suggests a container having a petaloid-shaped base which extends from the substantially cylindrical wall, as recited in claim 4. Accordingly, Applicant submits that Jakobsen clearly does not disclose or suggest all of the recitations of claim 4; and therefore, the obviousness rejection of claim 4 over Jakobsen should be withdrawn.

IV. Request for Interview

Applicant's representative respectfully requests a personal interview with the Examiner to discuss the amendments and arguments presented herewith. The Examiner is kindly requested to contact the undersigned attorney at the telephone number listed below to coordinate such an interview at the Examiner's earliest convenience.

V. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited.

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